

Exhibit 5 re May 10th Order

8

REC'D 5/3/23

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FILED

MAY 10 2023

Clerk of the Napa Superior Court
By: *[Signature]*
Deputy

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF NAPA**

11 **RONALD NICHOLSEN II,**

12 **Petitioner,**

13 **v.**

14 **KELHAM VINEYARDS & WINERY LLC,
15 AND SUSANNA ROGERS KELHAM,**

16 **Respondents.**

Case No. 21CV001403

***[Signature]*
[PROPOSED] ORDER FOLLOWING
CONTINUED SECOND ORDER TO SHOW
CAUSE HELD ON APRIL 17, 2023**

Hearing Date: April 17, 2023
Time: 8:30 a.m.
Dept.: B

1 On the Court's own motion, a continued second Order to Show Cause hearing was held on
2 April 17, 2023, mandating that Respondents Kelham Vineyards & Winery LLC ("Kelham
3 Vineyards" or the "Company") and Susanna Kelham (collectively, "Respondents") show cause why
4 they should not be sanctioned for failing to comply with the Court's Writ of Mandate and Order
5 Granting Petitioner Ronald NicholSEN II's Writ of Mandate to Enforce His Rights to Obtain, Inspect,
6 and Copy Certain Records of a Limited Liability Company Per California Corporations Code dated
7 November 4, 2022 (the "November Order"). The November Order provided, inter alia, that
8 "Respondents must comply with California Corporations Code section 17704.10 by providing
9 Petitioner Ronald NicholSEN II ("Petitioner" or "NicholSEN") with the Company's books and
10 records", as specifically set forth therein. Respondents were required to file and serve an initial
11 return of the writ not later than December 15, 2022.

12 Subsequently, the Court held a Case Management Conference on January 23, 2023. At that
13 time, Respondents had not filed a case management conference statement and had not returned the
14 writ as required by the November Order. Consequently, the Court set an Order to Show Cause
15 ("First OSC") hearing for February 15, 2023. Respondents did not timely file a response to the OSC
16 per California Rule of Court 3.110(i). At the time of the First OSC hearing, Respondents had still
17 not returned the writ as required by the November Order. As a result, the Court entered an order on
18 March 2, 2023, which, among other things, (i) imposed a sanction of \$1,500 on Susanna Kelham,
19 personally, (ii) found that Respondents failure to return the writ was without justification pursuant to
20 California Corporations Code section 17704.10, (iii) set a second Order to Show Cause hearing for
21 March 13, 2023 ("Second OSC"), and (iv) ordered the parties to brief the issue of remedies available
22 to Petitioner for Respondents' failure to comply with California Corporations Code section
23 17704.10.

24 In compliance with the March 2, 2023 Order, the parties submitted their briefs and additional
25 filings including, Kelham Vineyards' Initial Return to Writ, filed on March 9, 2023; Petitioner's
26 Petition for Recovery of Fees and Expenses and Response to OSC, filed on March 9, 2023 (the
27 "Petition for Fees"); Kelham Vineyards' Brief Regarding Remedies and Request for Evidentiary
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1 Hearing, filed on March 10, 2023; and Petitioner's Notice of Respondents' Noncompliance with the
2 Court's November 4, 2022 Writ and First Order to Show Cause, and accompanying documents, filed
3 on March 10, 2023.

4 The Second OSC was held on March 13, 2023, and the Court then continued the Second
5 OSC and set a hearing on Petitioner's Petition for Fees for April 17, 2023. The Court also set a
6 briefing schedule with opening briefs due March 30, 2023 and responses due April 11, 2023, and the
7 parties accordingly filed their briefs and responses. On April 17, 2023, the Court heard argument on
8 the pleadings set forth above, and issued an Amended Minute order on April 21, 2023.

9 **ORDER**

10 Having fully considered the pleadings, evidence, and arguments of all parties, both written and
11 oral, and finding good cause therefor, the Court HEREBY ADOPTS ITS AMENDED MINUTE
12 ORDER, attached hereto as Exhibit A, with the following modification:

- 13 1. Respondent Susanna Kelham (on behalf of Respondents) is ordered to personally pay,
14 within 15 days of the notice of entry of this order, \$134,679.40 (consisting of \$107,820 in
15 attorneys' fees, \$2,449.61 in costs and \$24,409.79 in expenses) payable to Petitioner's
16 counsel.

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18 **IT IS SO ORDERED**

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20 Dated: 5-9, 2023

21 By: 